

REMARKS/ARGUMENTS

This amendment is submitted in response to the Office Action dated April 10, 2008. After entry of this amendment claims 1, 2, 5-12, 15-20 and 23 will remain pending. By action of this amendment, claims 3, 4, 13, 14, and 21 have been cancelled. Claims 1, 5, 6, 7, 11 and 15-17 have been amended. No new matter has been added.

Reconsideration and allowance are respectfully requested in view of the remarks made below.

1. The Rejections under 35 U.S.C. §103(a)

Claims 1-21 and 23 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent Application No. 2005/0000931 to Bosl et al. (hereinafter "Bosl") in view of U.S. Patent No. 6,085,921 to Brown (hereinafter "Brown") and further in view of U.S. Patent No. 4,971,212 to Kusz (hereinafter "Kusz").

"To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). "All words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)." See MPEP 2143.03.

Bosl discloses a closure cap 10 and has a tamper-indicating band 40 that has a plurality of circumferentially spaced retaining flaps 60 connected to its end that is remote from the skirt 35. See *Bosl*, paragraph [0031]. It is indicated that the flaps can be processed to introduce fold lines or pleats. See *Bosl*, paragraph [0031]. Bosl does not disclose having at least one outwardly and at least one inwardly pleated fold. Bosl only discloses pleated elements with two folds pleated in the same direction. Bosl also does not disclose retaining elements that comprise a leading edge that is shaped so as to permit said retaining element to pass over said rotational locking structure when said closure is first screwed onto the container and wherein said at least one pleated

retaining element further comprises a trailing edge that is shaped so as to firmly engage said rotational locking structure when said closure is being unscrewed from the container.

Brown discloses a closure with a tamper evident band 14. The flange 30 may comprise a plurality of flange segments distributed around the circumference of the annular band 28. See *Brown*, col. 3, lines 57-65 and FIG. 6. Brown does not disclose retaining elements that comprise a leading edge that is shaped so as to permit said retaining element to pass over said rotational locking structure when said closure is first screwed onto the container and wherein said at least one pleated retaining element further comprises a trailing edge that is shaped so as to firmly engage said rotational locking structure when said closure is being unscrewed from the container.

Kusz discloses a tamper indicating band 20 have a flange 20a which is hinged to the inner surface of the band along a first circumferentially extending hinge 22 adjacent the free edge of the band 20 and at one end along a second hinge 23 which extends at an angle to the first hinge 22, shown as a curved hinge 23 extending from the hinge 22 axially of the closure. See *Kusz*, col. 2, lines 44-52. The other circumferential edge 24 of the flange 20a is free as is the top circumferential edge 25. See *Kusz*, col. 2, lines 44-52. Kusz does not disclose pleated retaining elements. Kusz also does not teach having rotational locking elements. Kusz further does not disclose retaining elements that comprise a leading edge that is shaped so as to permit said retaining element to pass over said rotational locking structure when said closure is first screwed onto the container and wherein said at least one pleated retaining element further comprises a trailing edge that is shaped so as to firmly engage said rotational locking structure when said closure is being unscrewed from the container.

The Applicant has amended claims 1, 11 and 23 to now require, *inter alia*, “wherein said at least one pleated retaining element comprises a leading edge that is shaped so as to permit said retaining element to pass over said rotational locking structure when said closure is first screwed onto the container and wherein said at least one pleated retaining element further comprises a trailing edge that is shaped so as to firmly engage said rotational locking structure when said closure is being unscrewed from the container.” This limitation was previously expressed in claims 3, 4, 13 and 14 (now canceled and incorporated into the independent claims). An example of the rotational locking structure (20) is shown in FIGS. 1-3 of the present application (reproduced below):

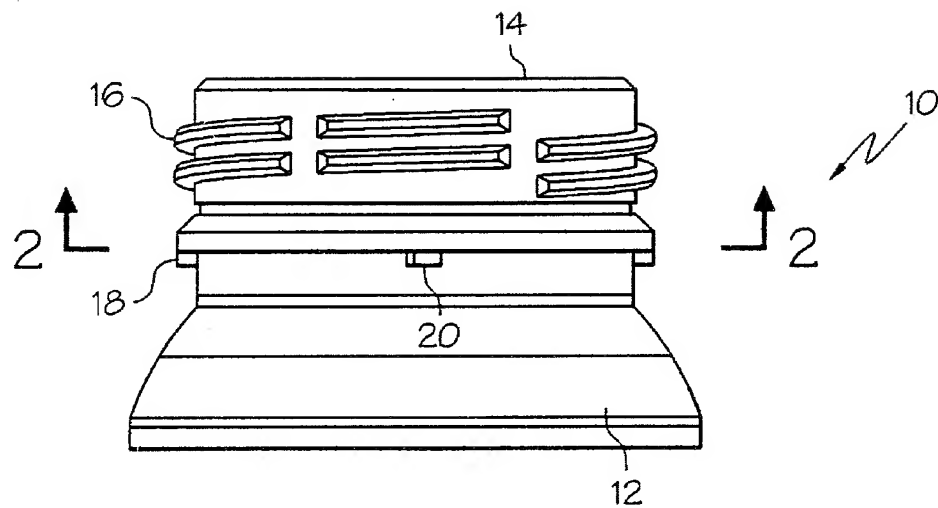


FIG. 1

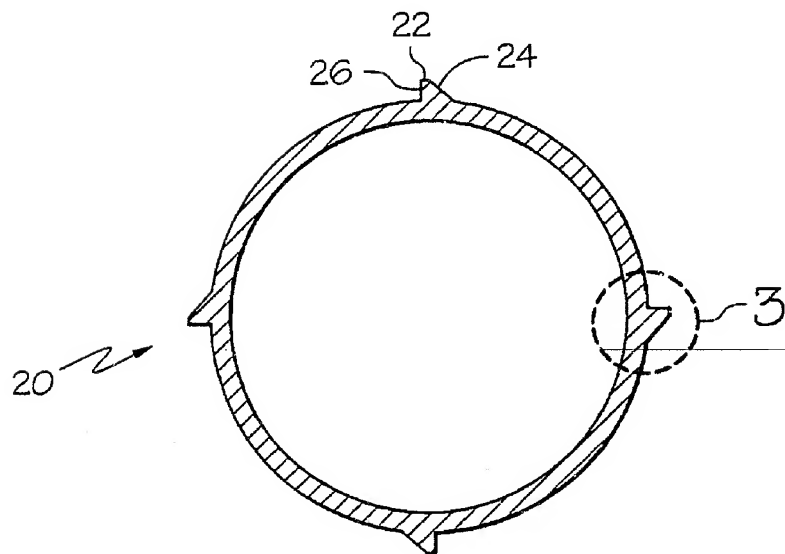


FIG. 2

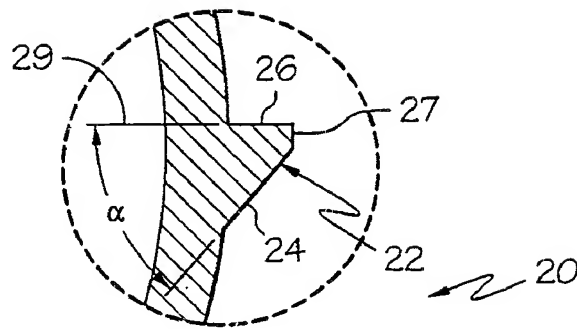
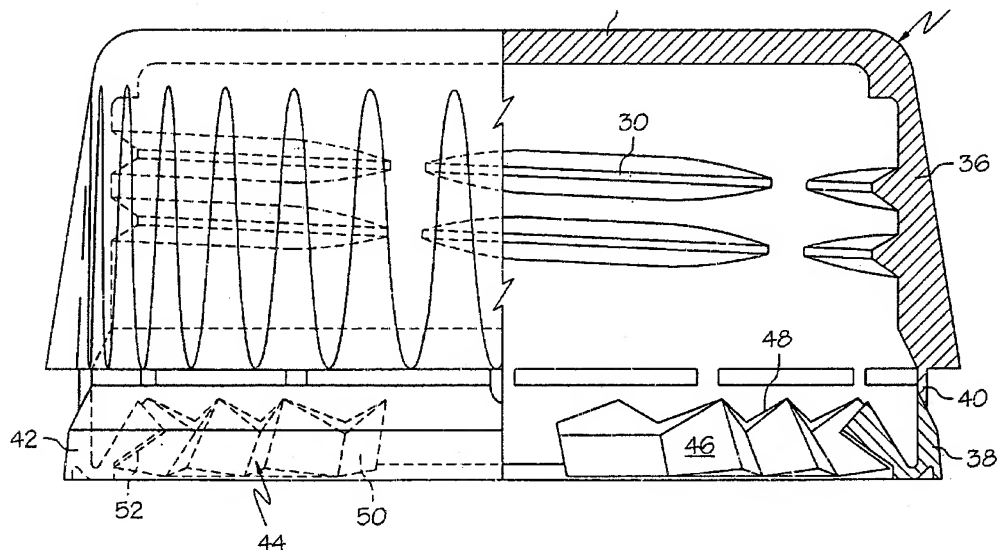


FIG. 3

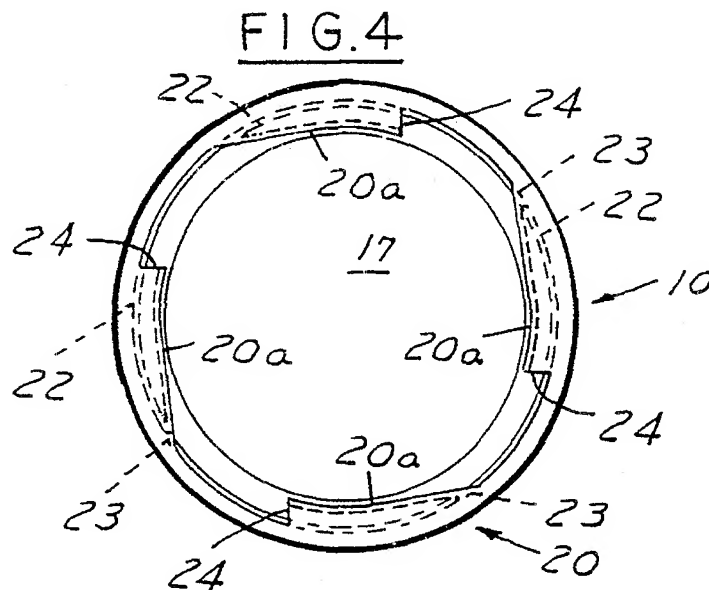
These figures are discussed in detail on page 5 of the present Application's specification. An example of the leading and trailing edge of the retaining element is shown below, represented by elements 50 and 52 respectively and discussed in detail on page 6 of the present Application's specification.



The Office Action tries to use Kusz in order to teach this limitation of having a retaining element shaped to firmly engage a rotational locking structure. However, the Applicant respectfully submits that Kusz does not disclose "wherein said at least one pleated retaining element comprises a leading edge that is shaped so as to permit said retaining element to pass

over said rotational locking structure when said closure is first screwed onto the container and wherein said at least one pleated retaining element further comprises a trailing edge that is shaped so as to firmly engage said rotational locking structure when said closure is being unscrewed from the container,” as is now required in independent claims 1, 11 and 23.

The Office Action points to elements 25, 23 and 24 of Kusz in order to provide teaching of retaining elements, leading edge and trailing edge. This can be shown in FIG. 4 of Kusz reproduced below, which shows a bottom plan view of the closure.



The retaining elements taught by Kusz do not disclose trailing edges that are shaped to firmly engage a rotational locking structure, since Kusz does not disclose a rotational locking structure such as disclosed in the present application and therefore the retaining elements cannot be shaped to firmly engage a rotational locking structure as now claimed. Furthermore, the retaining elements (flanges 20a) taught by Kusz are not shaped so as to permit the passing over of a rotational locking structure and instead edges 23 and 24 facilitate the application of the closure and minimizes the force required for application of the closure when passing the threads and the retaining bead. See *Kusz*, col. 2, lines 58-64.

Additionally, the flanges 20a taught by Kusz are designed to flex radially outwardly when passing the threads and flex radially inwardly beneath the bead. See *Kusz*, col. 2, lines 61-64. Thus the flanges are supposed to have flexibility when moved in an axial direction. There is no

disclosure or teaching regarding whether the flanges are also adequate for passing rotational locking elements, thereby having flexibility in a circumferential direction.

Kusz also does not teach whether or not the “leading edge” formed as a second hinge extending at an angle to the first circumferential hinge, shown as a curved edge, is applicable for passing structures in a rotational direction or whether the free edges are applicable for engaging a rotational locking structure. See *Kusz*, col. 2, lines 46-52. Therefore there is no motivation or teaching in order to provide the retaining elements as disclosed by Kusz with a rotational locking structure, because there is no mention of a rotational locking structure in Kusz. Furthermore, there is no disclosure about having the flanges, as shown by Kusz, having a certain function when moved in circumferential direction. There is no disclosure about how to combine the flanges as disclosed by Kusz, which are fixed to the inner surface of the band by two hinges (a first circumferential hinge and a second curved hinge extending at an angle to the first hinge), with pleated retaining elements.

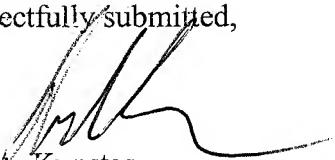
For at least the above reasons, Kusz, does not disclose the limitation of “wherein said at least one pleated retaining element comprises a leading edge that is shaped so as to permit said retaining element to pass over said rotational locking structure when said closure is first screwed onto the container and wherein said at least one pleated retaining element further comprises a trailing edge that is shaped so as to firmly engage said rotational locking structure when said closure is being unscrewed from the container.”

Therefore, each and every limitation of independent claims 1, 11 and 23 are not disclosed or taught, either separately or in combination, by Bosl, Brown or Kusz. A *prima facie* case for obviousness does not exist for the claims as now amended. Claims 2, 5-10, 12 and 15-20 are also in condition for allowance by virtue of their dependence upon allowable base claims.

2. Conclusion

Applicant has made an earnest effort to place this application in condition for allowance. If the Examiner feels that a telephone interview would expedite prosecution of this patent application, he or she is respectfully invited to telephone the undersigned at 215-599-0600. Contact with the undersigned via electronic mail at takupstas@patentwise.com is hereby authorized¹ per MPEP 502.03.

Respectfully submitted,



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¹ Recognizing that Internet communications are not secure, I hereby authorize the USPTO to communicate with me concerning any subject matter of this application by electronic mail. I understand that a copy of these communications will be made of record in the application file.